

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

---

JAY BLOOM, Petitioner,

v.

Electronically Filed  
Jul 12 2022 05:02 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AN FOR THE COUNTY OF CLARK, AND THE HONORABLE MARK R.  
DENTON, DISTRICT JUDGE, Respondent

-and-

TGC/FARKAS FUNDING, LLC, Real Party in Interest.

---

Supreme Court No. 84704

Eighth Judicial District Court  
Case No. A-20-822273-C

---

**REAL PARTY IN INTEREST'S ANSWERING BRIEF**

---

ERIKA PIKE TURNER  
NVBN 6454  
DYLAN T. CICILIANO  
NVBN 12348  
7251 Amigo Street, Suite 210  
Las Vegas, Nevada 89119  
Tel: (725) 777-3000  
Fax: (725) 777-3112  
*Attorneys for Real Party in Interest*  
*TGC/Farkas Funding, LLC*

## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Real Party in Interest TGC/Farkas Funding, LLC ("TGC/Farkas") is a Delaware limited liability company and has no parent corporation or publicly held company owning 10% or more of its stock to disclose.

The only law firm of record for TGC/Farkas is, and has been, Garman Turner Gordon, LLP ("GTG").

Dated this 12<sup>th</sup> day of July, 2022.

GARMAN TURNER GORDON LLP

By /s/ Erika Pike Turner  
ERIKA PIKE TURNER / NVBN 6454  
DYLAN T. CICILIANO / NVBN 12348  
7251 Amigo Street, Suite 210  
Las Vegas, Nevada 89119  
*Attorneys for Real Party in Interest  
TGC/Farkas Funding, LLC*

## **TABLE OF CONTENTS**

NRAP 26.1 DISCLOSURE .....	ii
I. ROUTING STATEMENT .....	1
II. ISSUES ON APPEAL .....	2
III. STATEMENT OF THE RELEVANT FACTS .....	2
A. Bloom is First 100's sole officer, manager and chairman. ....	3
B. TGC/Farkas was forced to compel production of First 100's books and records. ....	3
1. First 100 was ordered to produce books and records to TGC/Farkas.....	4
C. The district court confirmed the arbitration award, ordering First 100 to produce their books and records to TGC/Farkas.....	6
D. Bloom resisted performance ordered by the Judgment.....	6
E. Bloom personally appeared and defended himself and First 100 in response to the OSC .....	9
F. Bloom was found in contempt based on his personal disobedience and resistance of the Judgment. ....	11
G. First 100 ultimately purged the contempt and satisfied most of the contempt sanction.....	14
IV. STANDARD OF REVIEW .....	15
V. SUMMARY OF THE ARGUMENT .....	15
1. Bloom disobeyed a Court order, for which he was assessed monetary sanctions .....	16
2. Bloom was afforded due process.....	16
VI. LEGAL ARGUMENT.....	16
A. The Writ Petition does not present issues that warrant extraordinary relief. ....	16

1.	After failing to file the petition for more than a year, laches prevents Bloom’s challenge.....	17
2.	The Writ Petition does not present extraordinary circumstances. ....	19
B.	Bloom’s contempt is based on his disobedience to the Judgment, not a finding that he is First 100’s alter ego. ....	20
1.	As the sole natural agent of First 100, Bloom can be found in contempt for disobedience and/or resistance of the Judgment. ....	21
2.	The district court did not abuse its discretion in finding Bloom in contempt .....	24
3.	NRS 86.371 does not shield Bloom from contempt. ....	25
4.	The district court’s discussion of alter ego does not change the outcome of the FFCL or constitute error .....	26
C.	Bloom was not denied due process. ....	27
VII.	CONCLUSION.....	29
	CERTIFICATE OF COMPLIANCE .....	30
	CERTIFICATE OF SERVICE.....	32

## TABLE OF AUTHORITIES

Page(s)

### Cases

<i>1st Tech, LLC v. Rational Enter., Ltd.</i> , 2008 WL 4571057 (D. Nev. July 29, 2008) .....	22
<i>Archon Corp. v. Eighth Judicial Dist. Court in &amp; for Cnty. of Clark</i> , 133 Nev. 816, 407 P.3d 702 (2017).....	16, 17, 19
<i>Bisch v. Las Vegas Metro Police Dept.</i> , 129 Nev. 328, 302 P.3d 1108 (2013).....	19
<i>Bldg. &amp; Const. Trades Council of N. Nevada v. State ex rel. Pub. Works Bd.</i> , 108 Nev. 605, 836 P.2d 633 (1992).....	17
<i>Callie v. Bowling</i> , 123 Nev. 181, 160 P.3d 878 (2007).....	28
<i>Collins v. Union Fed. Sav. &amp; Loan Ass'n</i> , 99 Nev. 284, 662 P.2d 610 (1983).....	22
<i>Detwiler v. Eighth Jud. Dist. Court</i> , 137 Nev. 202, 486 P.3d 710 (2021).....	1, 22
<i>DFR Apparel Co., Inc. v. Triple Seven Promotional Products, Inc.</i> , 2014 WL 4828874 (D. Nev. Sept. 30, 2014).....	27
<i>Electrical Workers Pension Trust Fund of Local Union #58, IBEW v. Gary's Elec. Service Co.</i> , 340 F.3d 373 (6th Cir. 2003) .....	22
<i>First 100, LLC, et al. v. TGC/Farkas Funding, LLC</i> , 2022 WL 831467, 506 P.3d 319 (Mar. 17, 2022).....	18
<i>Gardner v. Henderson Water Park, LLC</i> , 133 Nev. 391, 399 P.3d 350 (2017).....	25
<i>Helfstein v. Eighth Jud. Dist. Ct.</i> , 131 Nev. 909, 362 P.3d 91 (2015).....	15, 21
<i>Luv n Care Ltd. v. Laurain</i> , 2019 WL 4279028 (D. Nev. Sept. 10, 2019).....	23, 24, 25
<i>Miller v. Burk</i> , 124 Nev. 579, 188 P.3d 1112 (2008).....	17
<i>Mona v. Eighth Judicial Dist. Court of State in &amp; for Cnty. of Clark</i> , 132 Nev. 719, 380 P.3d 836 (2016).....	17
<i>Montgomery v. eTrepped Technologies, LLC</i> , 548 F.Supp.2d 1175 (D. Nev. 2008).....	25
<i>N. Arlington Med. Bldg., Inc. v. Sanchez Const. Co.</i> , 86 Nev. 515, 471 P.2d 240 (1970).....	27

<i>Nelson v. Eighth Judicial Dist. Court in &amp; for County of Clark</i> , 137 Nev. Adv. Op. 14, 484 P.3d 270 (2021) .....	28
<i>NLRB v. Sequoia Dist. Council of Carpenters</i> , 568 F.2d 628 (9th Cir. 1977) .....	22
<i>Nuveda, LLC v. Eighth Jud. District Court</i> , 137 Nev. Adv. Op. 54, 95 P.3d (Nev. 2021) .....	1
<i>Old Aztec Mine, Inc. v. Brown</i> , 97 Nev. 49, 623 P.2d 981 (1981) .....	28
<i>Pan v. Eighth Judicial Dist. Court</i> , 120 Nev. 222, 88 P.3d 840 (2004) .....	17
<i>Peterson v. Highland Music, Inc.</i> , 140 F.3d 1313 (9th Cir. 1988) .....	22
<i>Sergio G. v. The Eighth Judicial Dist. Court</i> , 132 Nev. 975, 385 P.3d 617 (2016) .....	18
<i>State v. Dist. Ct. (Armstrong)</i> , 127 Nev. 927, 267 P.3d 777 (2011) .....	15
<i>State v. Eighth Judicial Dist. Court (Hedland)</i> , 116 Nev. 127, 994 P.2d 692 (2000) .....	17, 18
<i>State v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark</i> , 118 Nev. 140, 42 P.3d 233 (2002) .....	17
<i>State, Dep't. of Pub. Safety v. Coley</i> , 132 Nev. 149, 368 P.3d 758 (2016) .....	15
<i>Turner v. Eighth Judicial Dist. Court in &amp; for Cnty. of Clark</i> , 439 P.3d 396 (Nev. 2019) .....	18
<i>United States v. Laurins</i> , 857 F.2d 529 (9th Cir. 1988) .....	22
<i>Vredenburg v. Sedgwick CMS</i> , 124 Nev. 553 .....	27
<i>Wilson v. United States</i> , 221 U.S. 361 (1911) .....	22
 Statutes	
NRS 22.030(3) .....	1
NRS 38.242 .....	2, 3
NRS 86.241 .....	4, 12, 13, 14
NRS 86.371 .....	iv, 25, 26, 27

## Rules

NRAP 17(b) .....	1
NRAP 17(d), 17(b)(11)-(12) .....	1
NRAP 21(d) .....	30
NRAP 26.1 .....	ii, iii
NRAP 26.1(a) .....	ii
NRAP 28(e)(1) .....	30
NRAP 32(a)(4) .....	30
NRAP 32(a)(5) .....	30
NRAP 32(a)(6) .....	30
NRAP 32(a)(7)(C) .....	30
NRCP 37(b) .....	22

## Other Authorities

17 C.J.S. Contempt § 51 (updated 2020) .....	22
17 C.J.S. Contempt § 89 (2020) .....	28

## I. ROUTING STATEMENT

While “appeals from post judgment orders in civil cases” are presumptively assigned to the Court of Appeals, this matter is not an appeal from a post judgment order but a petition for writ of mandamus or prohibition. Thus, the matter is not presumptively assigned to the Court of Appeals under NRAP 17(b).

The Supreme Court also appropriately retains a case when either 1) it concerns matters raising as a principal issue a question of first impression involving the United States or Nevada Constitution or common law, or 2) it concerns matters raising a principal question of statewide public importance. NRAP 17(d), 17(b)(11)-(12). The exercise of the district court’s authority to find contempt against disobedient non-parties with notice of the order is in a developing area of Nevada jurisprudence –civil contempt.<sup>1</sup> Whether the district court’s enforcement authority extends beyond the parties to their responsible persons is implicated, and the *Findings of Fact, Conclusions of Law & Order re Evidentiary Hearing* (the “FFCL”) therefore addresses principal questions of statewide public importance. Further, the Writ Petition implicates the United States Constitution by contending that Jay Bloom (“Bloom”) was prevented from “exercising his right to due process under Section 1

---

<sup>1</sup> See *Detwiler v. Eighth Jud. Dist. Court*, 137 Nev. 202, 486 P.3d 710 (2021); *Nuveda, LLC v. Eighth Jud. District Court*, 137 Nev. Adv. Op. 54, 95 P.3d 500 (Nev. 2021) (recent opinions on writ petitions regarding NRS 22.030(3), a procedural rule implicated in contempt hearings). In *Detwiler*, the district court’s authority to issue contempt sanctions against the non-party contemnor was not the subject of dispute.



of the Fourteenth Amendment to the Constitution of the United States.”<sup>2</sup>

## **II. ISSUES ON APPEAL**

1) Can Bloom be found in contempt when he personally and on behalf of First 100, LLC, 1<sup>st</sup> One Hundred Holdings, LLC (collectively, “First 100”) engaged in contemptuous actions?

2) Was Bloom afforded sufficient due process prior to being found in contempt when he was personally served with the *Order to Show Cause Why First 100 and Bloom Should Not Be Found in Contempt of Court* (the “OSC”), and through counsel he was permitted to, and did, file briefs, participate in discovery, appear at hearings, and present evidence (documents and witnesses), or does the Fourteenth Amendment to the United States Constitution prohibit the FFCL’s finding that Bloom was jointly and severally liable for the Fee Award?

## **III. STATEMENT OF THE RELEVANT FACTS**

On April 7, 2021, the district court entered a lengthy FFCL<sup>3</sup> containing findings of fact in support of the ultimate conclusion that Bloom “disobeyed and resisted the [*Order Granting Motion to Confirm Arbitration Award, Denying Countermotion to Modify Award Per NRS 38.242 and Judgment* (the “Judgment”)]

---

<sup>2</sup> Writ Petition at p. 11.

<sup>3</sup> FFCL, AA, Vol. III, AA0903.

in contempt of Court (civil).”<sup>4</sup>

**A. Bloom is First 100’s sole officer, manager and chairman.**

First 100 consists of two affiliated Nevada limited liability companies governed by nearly identical operating agreements.<sup>5</sup> Bloom identifies himself as “the principal, founding director, and chairman of the board of directors of [First 100].”<sup>6</sup> There are no other officers or directors of First 100.<sup>7</sup> Since formation, both entities comprising First 100 have been single manager-managed by SJC Ventures Holding Company, LLC (“SJC”), and Bloom is SJC’s sole manager.<sup>8</sup>

**B. TGC/Farkas was forced to compel production of First 100’s books and records.**

TGC/Farkas was formed as a Delaware limited liability company by 50% member TGC 100 Investor, LLC (“TGC Investor”), managed by Adam Flatto (“Flatto”),<sup>9</sup> and 50% member Matthew Farkas (“Farkas”), to facilitate TGC

---

<sup>4</sup> *Id.*, AA0938.

<sup>5</sup> FFCL, AA, Vol. III, AA0906, ¶ 2; RA, Vol. II, RA0350-380; *Hearing Transcript of Testimony*, March 3, 2021 (the “3/3 Trans.”), AA, Vol. IV, AA0544:10-16.

<sup>6</sup> FFCL, AA, Vol. III, AA0906, ¶ 2; AA, Vol. III, AA0476; 3/3 Trans., AA, Vol. III, AA0520:3-7.

<sup>7</sup> FFCL, AA, Vol. III, AA0906, ¶ 2; RA, Vol. III, RA0459-475; RA, Vol. III, RA0476-486.

<sup>8</sup> FFCL, AA, Vol. III, AA906, ¶ 2; RA, Vol. II, RA0322-349, RA0322 at §§ 1.19, RA0333 at 6.1; RA, Vol. II, RA0350-380, RA0350 at §§ 1.19, RA0360 at 6.1; 3/3 Trans., AA, Vol. III, AA0757:18-23.

<sup>9</sup> FFCL, AA, Vol. III, AA0906:7-10; RA, Vol. III, RA0403-425.

Investor's investment of \$1 million in First 100,<sup>10</sup> in exchange for a 3% membership interest in First 100.<sup>11</sup>

**1. First 100 was ordered to produce books and records to TGC/Farkas.**

On April 13, 2017, First 100 sent Farkas a form of membership redemption agreement for execution/return.<sup>12</sup> In response, TGC/Farkas informed First 100 that Farkas lacked authority to unilaterally bind TGC/Farkas, and that any execution of documents "solely by [Farkas] is invalid and shall not be binding on [TGC/Farkas]."<sup>13</sup> In further response, on May 2, 2017, TGC/Farkas made a formal written demand for First 100's books and records pursuant to the terms of the First 100 operating agreements and NRS 86.241.<sup>14</sup> First 100 refused to produce any books and records.<sup>15</sup> On July 13, 2017, TGC/Farkas again informed First 100 that Farkas did not have the authority to bind TGC/Farkas without Flatto's consent.<sup>16</sup>

---

<sup>10</sup> *Id.*

<sup>11</sup> FFCL, AA, Vol. III, AA0906; *Decision and AWARD of Arbitration Panel (1) Compelling Production of Company Records; and (2) Ordering Reimbursement of Claimant's Attorneys' Fees and Costs* (the "Arb. Award") confirmed by the Judgment, RA, Vol. II, RA0295-300, RA0295, ¶ 1.

<sup>12</sup> FFCL, AA, Vol. III, AA0911:17-20; RA, Vol. II, RA0295-300, RA0297.

<sup>13</sup> FFCL, AA, AA0908:7-8; RA, Vol. III, RA0426-431; 3/3 Trans., AA, Vol. IV, AA0595:5-12.

<sup>14</sup> FFCL, AA, Vol. III, AA907; RA, Vol. II, RA0291-294.

<sup>15</sup> FFCL, AA, Vol. III, AA907; RA, Vol. II, RA0295-300, RA0296.

<sup>16</sup> FFCL, AA, Vol. III, AA0912:3-6, AA0908:3-8; RA, Vol. II, RA0295-300, RA0297, RA, Vol. III, RA0432-448, RA0432, RA0443; RA, Vol. III, RA0459-475; RA, Vol. III, RA0476-486.

As a result of First 100's persistent refusal to produce any of its books and records, TGC/Farkas filed an arbitration demand with the American Arbitration Association to enforce its membership rights.<sup>17</sup>

On September 15, 2020, the arbitration panel entered an arbitration award,<sup>18</sup> finding that there had been a "long and bad faith effort by [First 100] to avoid their statutory and contractual duties to a member to produced requested records."<sup>19</sup> The arbitration award conclusively resolved all of First 100's arguments in favor of TGC/Farkas and also expressly found that "Mr. Farkas did not have authority to bind [TGC/Farkas]."<sup>20</sup>

The arbitration award ordered First 100 to "make all the requested documents and information available from both companies [First 100] to [TGC/Farkas] for inspection and copying" within 10 days.<sup>21</sup> Bloom had notice of the arbitration award, including its finding that Farkas did not have authority to bind TGC/Farkas.<sup>22</sup>

///

///

---

<sup>17</sup> FFCL, AA, Vol. III, AA907:4-8; RA, Vol. II, RA0295-300.

<sup>18</sup> FFCL, AA, Vol. III, AA0912:9-11; RA, Vol. II, RA0295-300, RA0296.

<sup>19</sup> FFCL, AA, Vol. III, AA0907:11-15; RA, Vol. II, RA0295-300, RA0296.

<sup>20</sup> FFCL, AA, Vol. III, AA0908:12-14; RA, Vol. II, RA0295-300, RA0297.

<sup>21</sup> FFCL, AA, Vol. III, AA0908:15-21; RA, Vol. II, RA0295-300, RA0299.

<sup>22</sup> FFCL, AA, Vol. III, AA0918:3-5, 9-16, AA0930:15-17; 3/3 Trans., AA, Vol. III, AA0737:1-6, AA0736:10-20, AA0739:2-11.

**C. The district court confirmed the arbitration award, ordering First 100 to produce their books and records to TGC/Farkas.**

TGC/Farkas commenced the district court case to confirm the Arb. Award.<sup>23</sup> In response, First 100 filed a *Countermotion to Modify the Arb. Award* (the “Countermotion”).<sup>24</sup> The Countermotion was supported by Bloom’s declaration in his capacity as First 100’s “principal, founding director, and chairman.”<sup>25</sup>

On November 17, 2021, the district court confirmed the Arb. Award and entered the Judgment, requiring that First 100 produce its books and records and denying First 100’s Countermotion.<sup>26</sup> The Judgment was not appealed.<sup>27</sup>

**D. Bloom resisted performance ordered by the Judgment.**

On December 18, 2020, after First 100 failed to produce any books or records in response to the Judgment, the Court issued the OSC directed to First 100 and Bloom.<sup>28</sup> Bloom was personally served with the OSC on December 22, 2020.<sup>29</sup> After Bloom was served with the OSC, he further schemed to avoid the Judgment.

First, he sought to replace TGC/Farkas’ counsel who were enforcing the

---

<sup>23</sup> FFCL, AA, Vol. III, AA0909:2; AA, Vol. I, AA0001.

<sup>24</sup> FFCL, AA, Vol. III, AA0909:2-5; AA, Vol. I, AA0041.

<sup>25</sup> FFCL, AA, Vol. III, AA0909:5-8; AA, Vol. I, AA0046, ¶ 5.

<sup>26</sup> FFCL, AA, Vol. III, AA0909:10; AA, Vol. I, AA0054-55.

<sup>27</sup> FFCL, AA, Vol. III, AA0909:14-16; AA, Vol. 1, AA0123.

<sup>28</sup> OSC, AA, Vol. I, AA0151-155.

<sup>29</sup> FFCL, AA, Vol. III, AA909:17-19; RA, Vol. I, RA0003; RA, Vol. I, RA0004.

Judgment on behalf of TGC/Farkas. On January 4, 2021, Bloom asked his personal<sup>30</sup> attorney Raffi Nahabedian, Esq. (“Nahabedian”) to represent TGC/Farkas—his litigation adversary—for the purpose of releasing the Judgment and mooted the OSC. Bloom agreed to pay Nahabedian.<sup>31</sup> Bloom did not discuss the retention of Nahabedian for TGC/Farkas with Flatto or Farkas.<sup>32</sup> Nahabedian followed Bloom’s directions when purportedly representing the interests of TGC/Farkas.<sup>33</sup>

Bloom next threatened Farkas, telling him that “he was going to go to all 50 members [of First 100], shareholders, and sue [Farkas] for \$48 million.”<sup>34</sup> Bloom further informed Farkas’ parents of the ways that he would hurt Farkas.<sup>35</sup> Bloom used these threats to coerce Farkas into executing a release and an agreement retaining Nahabedian.

On January 7, 2021, at 1:58 pm, Bloom emailed documents to a UPS store

---

<sup>30</sup>FFCL, AA, Vol. III, AA0914:14-16; *see also* 3/3 Trans., AA, Vol. III, AA0549:13-0551:15; *Hearing Transcript of Testimony*, March 10, 2021 (the “3/10 Trans.”), AA, Vol. III, AA0809:11-19. In addition to being concurrent counsel for Bloom, Nahabedian was also former counsel for First 100 and a client of Bloom’s counsel Maier Gutierrez & Associates in the subject case (“MGA”). 3/10 Trans. AA, Vol. III, AA0809:1-AA0810:1. *See also Nevada Speedway v. Bloom, et al.*, Case No. A-20-809882-B of the Eighth Jud. Dist. Court (Nahabedian concurrently represented Bloom in the same January 2021 time period).

<sup>31</sup>FFCL, AA, Vol. III, AA0905:1-4; 3/10 Trans. AA, Vol. III, AA0799:5-16.

<sup>32</sup> FFCL, AA, Vol. III, AA0914:19-21.

<sup>33</sup> FFCL, AA, Vol. III, AA0915:9-10, AA0916, AA0917:8-10; 3/10 Trans. AA, Vol. III, AA0815:17-20; RA, Vol. III/IV, RA0487-816; RA, Vol. IV, RA0815; RA, Vol. IV, RA0816.

<sup>34</sup> FFCL, AA, Vol. III, AA0923; 3/10 Trans. AA, Vol. II, AA0667:25-AA0668:22.

<sup>35</sup> 3/3 Trans., AA, Vol. III, AA0668:18-22. This was in addition to messages threatening Farkas if he provided a declaration or otherwise participated in the subject district court litigation. *Id.* at AA0669-0670.

near Farkas' home and advised Farkas he could avoid adverse action if he went and signed the documents.<sup>36</sup> Bloom sent the UPS store: 1) a settlement agreement between TGC/Farkas and First 100 (the "Settlement Agreement"), 2) the Nahabedian attorney retainer agreement, 3) a letter terminating GTG—TGC/Farkas' counsel, and 4) a Release, Hold Harmless and Indemnification Agreement between First 100 and Farkas (collectively, the "Bloom Documents").<sup>37</sup> Bloom directed UPS to print one copy of the Bloom Documents and then to email and mail the documents to Bloom once signed by Farkas.<sup>38</sup> Bloom did not email the Bloom Documents to any known representative of TGC/Farkas- not to Farkas, Flatto or GTG.<sup>39</sup> By limiting the Bloom Documents to one copy for only Bloom, Bloom ensured that they would be concealed from TGC/Farkas.

Farkas immediately signed the Bloom Documents and returned them to Bloom.<sup>40</sup> Minutes later, Bloom forwarded the executed Bloom Documents to Nahabedian and directed Nahabedian to "get the Substitution of Attorney and Stip

---

<sup>36</sup> FFCL, AA, Vol. III, AA0915:5-17; 3/3 Trans., AA, Vol. IV, AA0684:25-AA0685:24.

<sup>37</sup> FFCL, AA, Vol. III, AA0915:4-9; RA, Vol. III, RA0492-508.

<sup>38</sup> FFCL, AA, Vol. III, AA0915:9-13; RA, Vol. III, RA0492.

<sup>39</sup> FFCL, AA, Vol. III, AA0915:14-17; RA, Vol. II, RA0397-402; As reflected in the record (*e.g.*, RA, Vol. II, RA0291-294, AA0903), GTG was counsel-of-record for TGC/Farkas consistently since May 2017, starting with the initial demand for books and records, and continuing through the district court actions.

<sup>40</sup> FFCL, AA, Vol. III, AA0915:17-20; RA, Vol. III, RA0492-508.

to Dismiss filed *for [TGC/Farkas]* and put this to bed in the next day or two...”<sup>41</sup>

On January 8, 2021, Nahabedian pressed forward based on Bloom and MGA’s assurances—despite having never even spoken to Farkas by that point in time.<sup>42</sup> On January 14, 2021, at Bloom’s direction, Nahabedian sent GTG a letter stating that he was hired to replace GTG and to vacate the Judgment pursuant to a settlement agreement.<sup>43</sup> Nahabedian’s letter regarding substitution of TGC/Farkas’ counsel was actually drafted by Bloom’s counsel, MGA, and approved by Bloom,<sup>44</sup> and it constituted the first time the existence of any purported settlement agreement was disclosed to TGC/Farkas.<sup>45</sup> TGC/Farkas only learned of Bloom and Nahabedian’s nefarious actions through a Motion to Compel.<sup>46</sup>

**E. Bloom personally appeared and defended himself and First 100 in response to the OSC.**

On January 19, 2021, First 100 filed its Motion to Enforce, seeking to enforce the Settlement Agreement.<sup>47</sup> On January 20, 2021, Bloom filed his Response to the

---

<sup>41</sup> FFCL, AA, Vol. III, AA0915:19-AA0916:2; RA, Vol. III, RA0492 (emphasis added).

<sup>42</sup> RA, Vols. III, RA0487-608, and specifically RA0578, RA0586.

<sup>43</sup> FFCL, AA, Vol. III, AA0915; RA, Vol. II, RA0381-386.

<sup>44</sup> FFCL, AA, Vol. III, AA0916:18-AA0917:3; RA, Vol. III, RA0558, RA0563-564, RA0565, RA0570, RA0576-579.

<sup>45</sup> FFCL, AA, Vol. III, AA0916:15-17; RA, Vol. II, RA0381-386.

<sup>46</sup> RA, Vol. I, RA0022-150; RA, Vol. V, RA0969-975.

<sup>47</sup> AA, Vol. I, AA0156-208.



OSC.<sup>48</sup>

The district court heard arguments on the Motion to Enforce and OSC on January 28, 2021. First 100 and Bloom were both represented by MGA at that hearing.<sup>49</sup> On February 9, 2021, the district court denied the Motion to Enforce.<sup>50</sup> As part of the district court's order, the district court permitted the parties to take up to four (4) depositions in advance of the evidentiary hearing on the OSC.<sup>51</sup> MGA, as counsel for both First 100 and Bloom, noticed and took Flatto and Farkas' depositions.<sup>52</sup> During TGC/Farkas' deposition of Nahabedian, MGA asserted objections of privilege on behalf of Bloom.<sup>53</sup>

During the evidentiary hearing, First 100 and Bloom were jointly represented by MGA.<sup>54</sup> MGA, acting on behalf of First 100 and Bloom, introduced exhibits and called Flatto, Farkas, and **Bloom** as witnesses.<sup>55</sup>

///

---

<sup>48</sup> AA, Vol. I, AA0209-214.

<sup>49</sup> AA, Vol. II., AA0742:9-13.

<sup>50</sup> *Id.* at AA0739-AA0743.

<sup>51</sup> *Id.* at AA0742.

<sup>52</sup> 3/3 Trans., AA, Vol. II/III, AA0557:19-21, AA0619:15-22.

<sup>53</sup> RA, Vol I, RA0022-150. The district court overruled Bloom's claim of privilege in time to obtain the Nahabedian communications and present them at the Evidentiary Hearing. RA, Vol. V, RA0969-975, and specifically RA0970.

<sup>54</sup> 3/3 Trans., AA, Vol. II, AA0540:20-24; 3/10 Trans. AA, Vol. III, AA0768:11-14.

<sup>55</sup> 3/3 Trans., AA, Vol. IV, AA0761; 3/10 Trans. AA, Vol. III, AA0766.

**F. Bloom was found in contempt based on his personal disobedience and resistance of the Judgment.**

It was undisputed at the evidentiary hearing that there had been no compliance with the Judgment.<sup>56</sup> Contrary to the arguments in the Writ Petition, the district court did not find Bloom in contempt just by virtue of Bloom being alter ego. Instead, the Court found that “[First 100] and **Bloom** disobeyed and resisted the [Judgment] in contempt of Court (civil).”<sup>57</sup> Specific to Bloom’s liability, the district court found that per the terms of the First 100 Operating Agreements, “**Bloom** is expressly the only person with authority or power . . . to do any act that would be binding on [First 100], or incur any expenditures on behalf of [First 100].”<sup>58</sup> **Bloom** was First 100’s only manager as well as the “Registered Agent” listed with the Nevada Secretary of State.<sup>59</sup> Accordingly, the district court found that “[**Bloom**] himself had to take reasonable steps to provide the records in compliance with the Order in his capacity as the sole person legally associated with [First 100] and responsible for the books and records of [First 100], as manager of [First 100’s] manager.”<sup>60</sup> Bloom’s

---

<sup>56</sup> AA, Vol. I, AA0209.

<sup>57</sup> AA, Vol. III, AA0776:10-11 (emphasis added).

<sup>58</sup> FFCL, AA, AA0926:4-13 (emphasis added); *see also* RA, Vol. II, RA0322-349, and specifically RA0327 at § 3.17; RA, Vol. II, RA0350-380, and specifically RA0354 at § 3.17.

<sup>59</sup> FFCL, AA, Vol. III, AA0925:8-11 (emphasis added); RA, Vol. III, RA0459-475; RA, Vol. III, RA0476-486.

<sup>60</sup> FFCL, AA, Vol. III, AA0935:21-26 (emphasis added).

responsibility for First 100's compliance was bolstered by his own representation that First 100 "ha[d] no continued operations, there are no employees, there are no bank accounts, there are no records being maintained as required under the operating agreements or NRS 86.241, and there is no active governance of any kind."<sup>61</sup>

The district court found that "**Bloom**, as the sole natural person legally associated with [First 100], did not testify to any efforts to marshal [First 100's] books and records for production to [TGC/Farkas]."<sup>62</sup> **Bloom** also undeniably had notice of the Judgment.<sup>63</sup> First 100 and Bloom also failed to demonstrate that their lack of compliance in producing statutorily required records was somehow excused.<sup>64</sup>

After considering all the evidence and arguments presented in conjunction with the Evidentiary Hearing, the district court expressly found that "the Motion to Enforce was a tool of that contempt as orchestrated by **Bloom** in disregard of the Arb. Award confirmed by the [Judgment]."<sup>65</sup>

The district court found that at all relevant times Bloom and First 100 were

---

<sup>61</sup> FFCL, AA, Vol. III, AA0936:18-21; 3/3 Trans., AA, Vol. IV, AA0756:2-4; 3/10 Trans. AA, Vol. III, AA0776:10-19, AA0778:9-17, AA0779:16-25; RA, Vol. II, RA0322-349, and specifically RA0324 at § 2.3 (requiring Bloom to maintain records); RA, Vol. II, RA0350-380, and specifically RA0352 at § 2.3.

<sup>62</sup> FFCL, AA, Vol. III, AA0932:19-23 (emphasis added).

<sup>63</sup> FFCL, AA, Vol. III, AA0926:4-5.

<sup>64</sup> FFCL, AA, Vol. III, AA0933:21-AA0934:7.

<sup>65</sup> FFCL, AA, Vol. III, AA0939:11-13 (emphasis added).

adverse to TGC/Farkas with pending contempt proceedings against them, and that “under no circumstances should [Bloom] have been directing [TGC/Farkas] counsel without any member of [TGC/Farkas] participation.”<sup>66</sup> The district court also found that “Bloom’s refusal to recognize inconvenient limitations on Farkas’ authority was shown to be pervasive and reckless.”<sup>67</sup> The district court recognized that “given the arbitrators’ expressly stated determination that Flatto’s consent was required to bind [TGC/Farkas] , . . . that no reasonably intelligent person with knowledge of that Arb. Award would once again attempt to enforce an agreement without Flatto’s consent.”<sup>68</sup> Likewise, the district court cited Bloom’s testimony trying to justify ignoring the arbitration award’s finding that Farkas could not bind TGC/Farkas,<sup>69</sup> and concluding it was unreasonable for Bloom to ignore the notices of the restrictions on Farkas’ authority to bind TGC/Farkas.<sup>70</sup> Based thereon, the district court concluded that “there was no good faith basis for **Bloom**’s intentional disregard of the Arb. Award and Order thereon [the Judgment] . . . .”<sup>71</sup>

---

<sup>66</sup> *Id.* at AA0917:11-13.

<sup>67</sup> *Id.* at AA0917:20-21.

<sup>68</sup> *Id.* at AA0917:20-918:3.

<sup>69</sup> *Id.* at AA0917:3-5; 3/3 Trans., AA, Vol. IV, AA0737:1-6; *see also* AA0736:10-20; AA0739:2-11.

<sup>70</sup> FFCL, AA, Vol. III, AA920:6-9.

<sup>71</sup> *Id.* at AA930:15-17 (emphasis added).

**G. First 100 ultimately purged the contempt and satisfied most of the contempt sanction.**

Only once the FFCL were entered did Bloom take any action to comply with the Judgment. Thousands of documents were finally produced after the entry of the FFCL (all of which could have been prior to the OSC and FFCL) to purge the contempt.<sup>72</sup> First 100 also posted a supersedeas bond in the amount of \$151,535.81 to stay execution of the Fee Award.<sup>73</sup>

The Supreme Court affirmed the FFCL on March 17, 2022.<sup>74</sup> Furthermore, it affirmed in part the contempt sanction, remanding the matter to the district court only to recalculate the amount of the contempt sanction.<sup>75</sup>

On June 7, 2022, the Court entered its Order Granting Motion to Modify Order Awarding Attorneys' Fees and Costs and for Release of Bond, and Denying Countermotion to Apply Posted Bond to Writ Petition and Judgment (the "Amended Fee Award").<sup>76</sup> The Amended Fee Award, which was not appealed, was entered in the principal amount of \$145,285.31 with post judgment interest accruing from June 11, 2021.<sup>77</sup> After applying the supersedes bond on June 22, 2022, to the outstanding

---

<sup>72</sup> RA, Vol. V, RA0980-1011; RA, Vol. V, RA1012.

<sup>73</sup> Bond, RA, Vol. V, 0976-979.

<sup>74</sup> AA, Vol. IV, AA1007-1011.

<sup>75</sup> *Id.* at AA1002-AA1006.

<sup>76</sup> RA, Vol V, RA1013-1021.

<sup>77</sup> *Id.*

principal and interest, a nominal \$1,606.85 remained outstanding on the contempt sanction.<sup>78</sup>

#### **IV. STANDARD OF REVIEW**

“In the context of writ petitions, [the appellate courts] review district court orders for an arbitrary or capricious abuse of discretion.”<sup>79</sup> An exercise of discretion is only considered arbitrary if it is “founded on prejudice or preference rather than on reason” and capricious if it is “contrary to the evidence or established rules of law.”<sup>80</sup>

#### **V. SUMMARY OF THE ARGUMENT**

After refusing to produce a single record in response to the Judgment and otherwise refusing to participate in post-judgment discovery, the district court issued the OSC directing First 100 and the sole-natural person directing their operations, Bloom, to show cause why they were not in contempt of the Judgment for failing to produce books and records as directed. After the two-day Evidentiary Hearing where Bloom testified and presented evidence, the district court found that “[First 100] and

---

<sup>78</sup> From June 11, 2021 to June 22, 2022, 376 days elapsed, with interest accruing at the statutory rate of 5.25% or approximately \$20.90 per day, a total of \$7,857.35. Therefore, with principal and interest, as of June 22, 2022, the amount due was \$153,142.66, less the \$151,535.81 bond, or \$1,606.85.

<sup>79</sup> *Helpstein v. Eighth Jud. Dist. Ct.*, 131 Nev. 909, 913, 362 P.3d 91, 94 (2015).

<sup>80</sup> *State, Dep't. of Pub. Safety v. Coley*, 132 Nev. 149, 153, 368 P.3d 758, 760 (2016)(citing *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931–32, 267 P.3d 777, 780 (2011)).

Bloom disobeyed and resisted the [Judgment] in contempt of Court (civil),” and awarded contempt sanctions in the form of attorneys’ fees and costs incurred related to the contempt against First 100 and Bloom.

**1. *Bloom disobeyed a Court order, for which he was assessed monetary sanctions.*** Bloom, the sole natural person in control of First 100, refused to produce the books and records of First 100 in violation of the Judgment. Bloom was found in contempt because he was the sole natural person responsible for First 100’s non-compliance.

**2. *Bloom was afforded due process.*** Bloom was personally served with the Contempt Motion/OSC, filed an opposition thereto through counsel, personally appeared at the Evidentiary Hearing to testify and otherwise participate, presented evidence through counsel, and called and examined witnesses through counsel.

## **VI. LEGAL ARGUMENT**

### **A. The Writ Petition does not present issues that warrant extraordinary relief.**

“Mandamus is an important escape hatch from the final judgment rule, but such relief must be issued sparingly and thoughtfully due to its disruptive nature.”<sup>81</sup>

Bloom bears the burden of demonstrating that extraordinary relief is

---

<sup>81</sup> *Archon Corp. v. Eighth Judicial Dist. Court in & for Cnty. of Clark*, 133 Nev. 816, 824, 407 P.3d 702, 709 (2017).

warranted.<sup>82</sup> The error committed by the district court must be “clear and indisputable legal error” or an “arbitrary and capricious abuse of discretion.”<sup>83</sup> “As a general principle, [the courts] practice judicial restraint, avoiding legal and constitutional issues if unnecessary to resolve the case at hand.”<sup>84</sup>

**1. After failing to file the petition for more than a year, laches prevents Bloom’s challenge.**

“Writ relief is subject to laches.”<sup>85</sup> “In deciding whether the doctrine should be applied to preclude consideration of a petition for a writ of mandamus, a court must determine: (1) whether there was an inexcusable delay in seeking the petition, (2) whether an implied waiver arose from the petitioner's knowing acquiescence in existing conditions, and (3) whether there were circumstances causing prejudice to the respondent.”<sup>86</sup>

An inexcusable delay alone warrants a finding of laches.<sup>87</sup> Delays of eleven

---

<sup>82</sup> See *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

<sup>83</sup> *Archon Corp.*, 133 Nev. at 824, 407 P.3d at 709.

<sup>84</sup> *Mona v. Eighth Judicial Dist. Court of State in & for Cnty. of Clark*, 132 Nev. 719, 724, 380 P.3d 836, 840 (2016)(citing *Miller v. Burk*, 124 Nev. 579, 588–89, 188 P.3d 1112, 1118–19 (2008)).

<sup>85</sup> *State v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 118 Nev. 140, 147–48, 42 P.3d 233, 238 (2002).

<sup>86</sup> *Bldg. & Const. Trades Council of N. Nevada v. State ex rel. Pub. Works Bd.*, 108 Nev. 605, 611, 836 P.2d 633, 637 (1992)(internal citations omitted).

<sup>87</sup> *State v. Eighth Judicial Dist. Court (Hedland)*, 116 Nev. 127, 135, 994 P.2d 692, 697 (2000).



months or more have been found to be inexcusable.<sup>88</sup> Here, the FFCL were entered on April 7, 2021.<sup>89</sup> Bloom filed his Writ Petition on May 16, 2022, more than a year after entry of the FFCL. There is no excuse that justifies such extensive delay.

Furthermore, Bloom cannot credibly argue that he was unaware that he needed to file a writ to challenge the FFCL. First 100 filed a Notice of Appeal docketed in Appeal Case 82794 (the “Appeal”) on April 15, 2021,<sup>90</sup> resulting in the decision of the Supreme Court at *First 100, LLC, et al. v. TGC/Farkas Funding, LLC*, 2022 WL 831467, 506 P.3d 319 (Mar. 17, 2022) (unpublished disposition). First 100’s April 26, 2021, Case Appeal Statement clearly identifies that Bloom was not a party to the Appeal; Bloom was also not a party to the opening brief. On November 1, 2021, in Respondent’s Answering Brief, TGC/Farkas clearly lays out First 100 lacked standing to challenge that Bloom is in contempt,<sup>91</sup> a contention the Supreme Court recognized that First 100 did not “meaningfully refute.”<sup>92</sup> There was an inexcusable delay and an implied waiver as a result of not filing an earlier Writ Petition.

Further, there has been prejudice to TGC/Farkas. Writ petitions should be

---

<sup>88</sup> *Id.* (stating that an 11-month delay was inexcusable); see also *Turner v. Eighth Judicial Dist. Court in & for Cnty. of Clark*, 439 P.3d 396 (Nev. 2019)(table)(applying laches after a year delay); *Sergio G. v. The Eighth Judicial Dist. Court*, 132 Nev. 975, 385 P.3d 617 (2016) (22-month delay).

<sup>89</sup> FFCL, AA, Vol. III, AA0903.

<sup>90</sup> AA, Vol. III/IV, AA0943-AA0986.

<sup>91</sup> Docket 82794, Document 2021-31390.

<sup>92</sup> AA, Vol. IV, AA1010.

sparingly granted because they are disruptive.<sup>93</sup> They are particularly disruptive to finality when they are filed subsequent to an unsuccessful appeal. TGC/Farkas has been denied finality of the FFCL, it has now been required to brief the same matters for a second time to this appellate court and must await further proceedings. The Supreme Court will once again have to review the FFCL. Tardy writ petitions such as Bloom's delay the ultimate resolution and present piecemeal challenges to the appellate courts, which are both costly for the parties and the Supreme Court, inefficient and detrimental to justice. Thus, laches should prevent Bloom's challenge.

**2. The Writ Petition does not present extraordinary circumstances.**

Resolving the Appeal, the Supreme Court has already affirmed the district court's finding of contempt against First 100, including its findings of fact. Thus, the Appeal resolved any issues surrounding the initial contempt. Furthermore, while First 100 and Bloom initially contended that they were unable to comply with the Judgment, that position was belied by the fact that Bloom in fact purged their contempt by producing the documents ordered by the district court. The issue is now moot and does not require any further relief, let alone extraordinary relief.<sup>94</sup>

Narrowly, the only remaining issue is whether Bloom is jointly and severally

---

<sup>93</sup> *Archon Corp.*, 133 Nev. at 824, 407 P.3d at 709.

<sup>94</sup> *Bisch v. Las Vegas Metro Police Dept.*, 129 Nev. 328, 334, 302 P.3d 1108, 1113 (2013).

liable for the remainder of the contempt sanction. That too is a trivial point as First 100 posted a supersedeas bond to stay execution pending the original appeal. After applying the bond to the amended judgment amount, a mere \$1,606.87 remained due and owing, consisting of interest that accrued pending appeal. As Bloom did not forfeit any property when producing the records or post the bond, even if granted, the writ would not actually restrain or prevent any action by the district court. In effect, Bloom seeks no substantive relief.

Furthermore, while the Writ Petition centers on “alter ego,” Bloom largely crafts the argument out of whole cloth. The district court found that alter ego may be an alternative basis for joint and several liability, whereas its primary conclusion was that Bloom orchestrated and directed the contemptuous actions after receiving notice of the Judgment and OSC. As such, even if the Court were to conclude that Bloom is correct with respect to alter ego (he is not), writ relief would still not be warranted, as the district court’s primary conclusion still stands.

**B. Bloom’s contempt is based on his disobedience to the Judgment, not a finding that he is First 100’s alter ego.**

The Writ Petition lacks merit and is based on the mischaracterization that Bloom was found liable for contempt and an award of fees and costs just because he is First 100’s alter ego, as opposed to the fact that Bloom personally disobeyed the Court’s order. The district court was abundantly clear that contempt was based

on the finding that “[First 100] and Bloom disobeyed and resisted the [Judgment] in contempt of Court (civil).”<sup>95</sup> The Court’s finding is reviewed for arbitrary or capricious abuse of discretion.<sup>96</sup>

Bloom falsely contends that the FFCL held that Bloom was liable for the Judgment *because* he is First 100’s alter ego. No such order was made, nor is any such determination necessary to support a finding of contempt against Bloom. The finding of contempt was only based on the failure to produce books and records, and Bloom was personally held in contempt based on his intentional actions to frustrate First 100’s compliance with the Judgment, not just because Bloom was First 100’s alter ego.<sup>97</sup> Accordingly, the district court did not abuse its discretion when finding that Bloom caused First 100 to disobey the Judgment.

**1. As the sole natural agent of First 100, Bloom can be found in contempt for disobedience and/or resistance of the Judgment.**

The Writ Petition argues that Bloom cannot be found to be in contempt of the Judgment because he is not a party to the Judgment. However, Nevada’s contempt statutes (NRS Chapter 22) are directed *to conduct* of persons resisting or disobeying enforceable court orders, not just to the parties.

---

<sup>95</sup> FFCL, AA, Vol. III, AA0938:10-12.

<sup>96</sup> *Helfstein*, 131 Nev. at 913, 362 P.3d at 94.

<sup>97</sup> FFCL, AA, Vol. III, AA0938:10-12.

While limited liability companies are separate legal entities, they operate through the direction and control of natural persons.<sup>98</sup> Company agents, therefore, may be punished for contempt where they direct the company's violations of court orders, as "a command to the corporation is in effect a command to those who are officially responsible for its affairs; if they, apprised of the [order], prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience and may be punished for contempt."<sup>99</sup>

The "Responsible Party" rule is neither controversial nor inapplicable. Courts around the country, including those interpreting Nevada law, recognize that contempt powers reach through the corporate veil to command not only the entity, but those who are officially responsible for the conduct of its affairs.<sup>100</sup> If it were

---

<sup>98</sup> See e.g. *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983) (recognizing that a shareholder cannot conspire with the entity its controls).

<sup>99</sup> 17 C.J.S. Contempt § 51 (updated 2020); see *Detwiler*, 137 Nev. Adv. Op. 18, 486 P.3d at 719 (citing favorably to Corpus Juris Secundum on Contempt); see also NRCP 37(b) (compelling compliance and authorizing sanctions against a party's "officers, directors or managing agents" for court discovery orders).

<sup>100</sup> *Wilson v. United States*, 221 U.S. 361, 376 (1911); *Electrical Workers Pension Trust Fund of Local Union #58, IBEW v. Gary's Elec. Service Co.*, 340 F.3d 373, 380 (6<sup>th</sup> Cir. 2003) (holding defendant's non-party officer in contempt for the defendant's failure to obey the court's judgment and order). *Electrical Workers Pension Trust Fund of Local Union #58; United States v. Laurins*, 857 F.2d 529, 535 (9<sup>th</sup> Cir. 1988) ("A nonparty may be liable for contempt if he or she either abets or is legally identified with the named defendant... ***An order to a corporation binds those who are legally responsible for the conduct of its affairs.***") (emphasis added); *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1323-24 (9<sup>th</sup> Cir. 1988); *NLRB v. Sequoia Dist. Council of Carpenters*, 568 F.2d 628, 633 (9<sup>th</sup> Cir. 1977); *1<sup>st</sup> Tech, LLC v. Rational Enter., Ltd.*, 2008 WL 4571057, at \*8 (D. Nev. July 29, 2008)

otherwise, a company's truculent manager could simply ignore a court's command with impunity.

*Luv n Care Ltd. v. Laurain* is particularly notable on this point.<sup>101</sup> There, a non-party Nevada limited liability company that had ceased operating was found in contempt after it failed to respond to a subpoena for documents.<sup>102</sup> The managing member of the entity was found in contempt after arguing that he was legally distinguishable from the subpoenaed entity and was alternatively not in possession of responsive documents.<sup>103</sup> In holding the manager in contempt, the Nevada Federal District Court recognized that "an order to a corporation or another entity binds those who are legally responsible for the conduct of its affairs."<sup>104</sup> The court found when a company receives a court order for the production of documents, the company, as well as those responsible for its affairs and records, must take reasonable steps to comply with the order.<sup>105</sup> This expressly extends to the production of documents by the company's manager, who by statute must safeguard the company's assets and records.<sup>106</sup> Put another way, those who are legally

---

(unreported disposition).

<sup>101</sup> 2019 WL 4279028, at \* 4 (D. Nev. Sept. 10, 2019) (unreported disposition).

<sup>102</sup> *Id.* at \*1.

<sup>103</sup> *Id.* at \*3-4.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at \*5.

<sup>106</sup> *Id.*

responsible for the conduct of a company's affairs may not simply disregard a court order requiring the production of documents.<sup>107</sup>

Bloom, like the managing member in *Luv N Care*, cannot avoid obligations arising from the district court Judgment by hiding behind the corporate veil or otherwise disclaiming possession of First 100's records that are in his legal custody.

**2. The district court did not abuse its discretion in finding Bloom in contempt.**

Bloom is First 100's registered agent, principal, and chairman. The district court found that the entities comprising First 100 are manager-managed, and Bloom is the only person with authority or power to do any act that would be binding on First 100.<sup>108</sup> In other words, Bloom alone could cause First 100 to obey or disobey the Judgment.<sup>109</sup> As such Bloom had to take reasonable steps to comply with the Judgment.<sup>110</sup>

In its FFCL, the district court found that First 100 and Bloom did nothing to produce documents in response to the Judgment.<sup>111</sup> Instead, Bloom orchestrated a

---

<sup>107</sup> *Id.*

<sup>108</sup> RA, Vol. II, RA0322-349, RA0327 at Sects. 3.17, RA0333 at 6.1(A); RA, Vol. II, RA0350-380, RA0354 at Sects. 3.17, RA0360 at 6.1(A).

<sup>109</sup> FFCL, AA, Vol. III, AA0926:4-14.

<sup>110</sup> *Id.* at AA0935:21-25; RA, Vol. II, RA0322-349; RA, Vol. II, RA0350-380.

<sup>111</sup> FFCL, AA, Vol. III, AA0925:20-22.

scheme to discharge the Judgment through the bogus Settlement Agreement.<sup>112</sup> Both of these actions/inactions demonstrate disobedience to the Judgment that give rise to contempt.

### **3. NRS 86.371 does not shield Bloom from contempt.**

Bloom suggests he is absolutely immune from contempt proceedings under NRS 86.371. While managers and members are not liable for debts of the company under NRS 86.371, whether Bloom is in contempt of an order is a different question from whether he is liable for First 100's debts. The FFCL does not make Bloom liable for First 100's debts (to wit, the monetary award of the Judgment). Instead, it finds Bloom in contempt for disobeying the Judgment's performance obligations and responsible for his contempt actions. NRS 86.371 does not insulate members and managers from liability related to their actions,<sup>113</sup> such that NRS 86.371 does not preclude the contempt finding against Bloom or his joint and several liability for the contempt sanctions.

///

---

<sup>112</sup> *Id.* at AA0937:15-18.

<sup>113</sup> Under a variety of circumstances, managers of a Nevada limited liability company are personally liable for their own actions. *See Gardner v. Henderson Water Park, LLC*, 133 Nev. 391, 393, 399 P.3d 350, 351 (2017) (recognizing liability for intentional misconduct, fraud or a knowing violation of law); *Montgomery v. eTrepped Technologies, LLC*, 548 F.Supp.2d 1175, 1179 (D. Nev. 2008) (recognizing the application of corporate law regarding the business judgment rule imposing individual liability on officers and directors to Nevada limited liability companies).



**4. The district court's discussion of alter ego does not change the outcome of the FFCL or constitute error.**

The near entirety of the Writ Petition is dedicated to two paragraphs of the FFCL that mention *alter ego*.<sup>114</sup> Bloom falsely concludes that the district court found Bloom to be in contempt just by virtue of his being First 100's *alter ego*. Bloom was found to be in contempt because he is First 100's responsible party and instead of directing compliance, Bloom bucked it. The discussion of *alter ego* went to the equities at bar. The district court noted that "***in addition*** to the 'responsible party' rule that applies to contempt, there should be no immunity for liability when, as here, Bloom is [First 100's] *alter ego*."<sup>115</sup> The district court identified that only Bloom controlled First 100, First 100 was in default with the Nevada Secretary of State, had no operations, no employees, no bank accounts, no active governance, and claimed there were no corporate records.<sup>116</sup> The district court found that it would be inequitable for Bloom to escape the consequences of his causing First 100 to ignore the Judgment. In other words, notwithstanding his liability as First 100's responsible party, under the circumstances the LLC form should not shield Bloom from the consequences of his disobedience and resistance of the Judgment, observing that if

---

<sup>114</sup> FFCL, AA, Vol. III, AA0936:1-AA0937:3.

<sup>115</sup> *Id.* at AA0937:1-3.

<sup>116</sup> *Id.* at AA0936:18-24.

that were not the case “there would never be a consequence for an entity’s non-compliance.”<sup>117</sup>

In addition, while it is unnecessary to determine whether Bloom is First 100’s *alter ego*, the record supports such a finding. It is undeniable that Bloom influences and governs First 100 and that there is a unity of interest between Bloom and First 100.<sup>118</sup> Further, the district court found that it would promote a manifest injustice not to hold Bloom responsible for his actions on behalf of First 100, as doing so would effectively immunize the contempt.<sup>119</sup> Accordingly, substantial evidence exists that Bloom is First 100’s *alter ego*.<sup>120</sup>

**C. Bloom was not denied due process.**

First 100 asserts that Bloom was not afforded due process and was deprived his right to due process “under Section 1 of the Fourteenth Amendment to the Constitution of the United States” as he was “not able to take depositions or file

---

<sup>117</sup> *Id.* at AA0935:27-AA0936:2.

<sup>118</sup> The FFCL sets forth a unity of interest, including the following relative factors: undercapitalization, the failure to observe corporate formalities, refusal to produce records, the non-existence of bank accounts and employees, and Blooms’ domination and control over First 100. *DFR Apparel Co., Inc. v. Triple Seven Promotional Products, Inc.*, 2:11-CV-01406-APG, 2014 WL 4828874, at \*2 (D. Nev. Sept. 30, 2014); *N. Arlington Med. Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 523, 471 P.2d 240, 245 (1970).

<sup>119</sup> FFCL, AA, Vol. III, AA0936:24-AA0937:3.

<sup>120</sup> *N. Arlington Med. Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 523, 471 P.2d 240, 245 (1970); *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557 n. 4, 188 P.3d 1084, 1087 n. 4 (2008) (defining “Substantial evidence” as “evidence that a reasonable person could accept as adequately supporting a conclusion.”).

dispositive motions as to himself personally.”<sup>121</sup> Bloom failed to raise the argument in the district court, thereby waiving it.<sup>122</sup> And waiver’s application would be for good reason, as Bloom actually participated at every juncture of the contempt proceedings.

Furthermore, civil contempt proceedings generally “do not require extensive procedural protections or due process safeguards, beyond basic due process, since a civil contemnor may purge the contempt and be absolved of the civil contempt sanction.”<sup>123</sup> Bloom was afforded substantial due process. Bloom was personally served with OSC, individually appeared through counsel, filed briefs, was able to engage in discovery, and called witnesses at the evidentiary hearing, including confronting Farkas and Flatto and testifying himself. As such, Bloom was afforded more than basic due process.

Further, First 100’s reliance on *Callie v. Bowling* is misapplied.<sup>124</sup> While *Callie* requires an independent action to make one individual personally liable for a judgment against another, that did not occur here. While the district court’s order discussed alter ego in two paragraphs of its 35-page order, it never found that Bloom

---

<sup>121</sup> Writ Petition at p. 11.

<sup>122</sup> *Nelson v. Eighth Judicial Dist. Court in & for County of Clark*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 272 (2021) (finding due process argument waived when not raised in the district court); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

<sup>123</sup> 17 C.J.S Contempt § 89 (2020) (footnotes omitted).

<sup>124</sup> 123 Nev. 181, 160 P.3d 878 (2007).

was liable for the Judgment and no one has looked to Bloom to pay the monetary award contained within the Judgment. The district court instead found that Bloom was liable for the Fee Award because he caused First 100 to disobey the Judgment-period. As *Callie* does not address a contempt situation similar to the circumstances here, *Callie* does not apply.

## VII. CONCLUSION

Based on the forgoing, this Court should deny the Writ Petition.

Dated this 12<sup>th</sup> day of July 2022.

GARMAN TURNER GORDON LLP

By /s/ Erika Pike Turner

ERIKA PIKE TURNER / NVBN 6454

DYLAN T. CICILIANO / NVBN 12348

7251 Amigo Street, Suite 210

Las Vegas, Nevada 89119

*Attorneys for Real Party in Interest*

*TGC/Farkas Funding, LLC*

### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office 365 Word in 14-point Times New Roman font.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ proportionally spaced, has a typeface of 14 points or more and contains 6,910 words; or

☐ does not exceed 30 pages.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules

of Appellate Procedure.

Dated this 12<sup>th</sup> day of July 2022.

GARMAN TURNER GORDON LLP

By /s/ Erika Pike Turner

ERIKA PIKE TURNER / NVBN 6454

DYLAN T. CICILIANO / NVBN 12348

7251 Amigo Street, Suite 210

Las Vegas, Nevada 89119

*Attorneys for Real Party in Interest*

*TGC/Farkas Funding, LLC*

## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **REAL PARTY IN INTEREST'S ANSWERING BRIEF** was filed electronically with the Nevada Supreme Court on July 12, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

### **MAIER GUTIERREZ & ASSOCIATES**

Jason R. Maier

Nevada Bar No. 8557

Email: [jrm@mglaw.com](mailto:jrm@mglaw.com)

Joseph A. Gutierrez

Nevada Bar No. 9046

Email: [jag@mglaw.com](mailto:jag@mglaw.com)

Danielle J. Barraza

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

*Attorneys for Jay Bloom*

BY: /s/ Max Erwin  
an employee of Garman Turner Gordon LLP